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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,648	12/22/2003	Rick T. Swartzburg		7275

7590 11/30/2004

Ted Masters  
23344 8th Street  
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EXAMINER

TRETTEL, MICHAEL

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/743,648

Applicant(s)

SWARTZBURG, RICK T.

Examiner

Michael Trettel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/22/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

Claim 10 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. In the present case, the parent claim is drawn to a mattress topper, while claim 10 only sets forth an intended mode of use of the topper. Claim 10 therefore does not add any new structural features and fails to limit the parent claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, 7, 8 and 10 to 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Landvik et al (US 6,159,574). Landvik et al shows a laminated foam body support that in one embodiment shown in Figures 2 and 6 takes the form of a mattress topper or overlay. The overlay comprises at least a relatively thick base layer 3 of foam with a hardness of 13N, and a relatively thin top layer 4 made of foam with a hardness of 10N. The layers can be made from a viscoelastic foam, although the use of polyurethane foam is mentioned as well. The top layer is less firm (i.e., softer) than the base layer, and as set forth in column 2, lines 36 to 49 the

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laminated foam layers can be used as a mattress overlay upon a conventional mattress. The overlay is inherently capable of being flipped over to present a harder upper surface if so desired, and as such the claim limitations set forth in claims 10, 12, and 13 which are drawn to an inferentially claimed mode of use are anticipated by the Landvik et al reference. Note the methods of use set forth in column 2, lines 36 to 38 and column 3, lines 63 to 67.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landvik et al (US 6,159,574). The particular foam ILDs and densities claimed are well within the ordinary level of skill in the art, since the applicant has not shown any particular criticality is associated with the claimed parameters claim 9 is considered to be obvious in view of the Landvik et al reference.

Claims 1 to 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barman et al (US 6,715,173) in view of Landvik et al (US 6,159,574). Barman et al shows a removable mattress topper pad 50 which can be placed upon a mattress 30 and retained by frictional contact. The topper pad 50 can be made from multiple layers of foam material 51 (column 5, lines 56 and 57) encased within an outer covering that has a high friction backing layer to enhance attachment

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to the mattress 30. Note the wide variety of differing materials that can be used to make the internal layers of the pad (column 5, lines 53 to 67 and column 6, lines 1 to 13). Note the method steps set forth in column 8, lines 5 to 28, wherein the use of multiple differing types of topper pads which can be selected and removed from a mattress by differing users is discussed, also note the methods of shipping and storing the topper pad which are set forth. The use of multiple layers of foam filler is already present within the disclosure of the Barman et al reference, as well as the concepts of flipping the topper pad, moving the pad to another mattress, replacing the pad with a differing pad, etc. Landvik et al teaches that it is known in the art to use multiple layers of foam within a topper pad, with the foam layers having differing firmnesses, thicknesses, and densities. It would have been obvious to the skilled artisan to use multiple layers of foam materials with differing thicknesses, densities, and ILD's within the Barman et al mattress topper pad in view of the teachings of Landvik et al.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. England, McLeod, Gerrick, Schwarz et al, and Landvik (US 6,602,579) show mattress topper pads which are of particular interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is 703-308-0416. The examiner can normally be reached on Monday, Tuesday, Thursday, or Friday from 7.30 am to 5.00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford, can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
Michael Trettel  
Primary Examiner  
Art Unit 3673